

FILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
AUG 14 2000  
DAVID J. MALAND, CLERK  
BY  
DEPUTY

CIVIL ACTION NO. 6:00CV442-WMS

2. With respect to the allegations contained in Paragraph II, states that Plaintiff's Original Petition speaks for itself, although admits the allegations contained therein are broad and vague; states it is without knowledge or information sufficient to form a belief as to whether any of Plaintiff's allegations against Third-Party Plaintiffs are true; and denies the allegations therein against Markel.

3. With respect to the allegations contained in Paragraph III, admits, based on information and belief, the allegations pertaining to ERISA; denies any contracts exist between Markel and Third-Party Plaintiffs; and states it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein.

4. With respect to the allegations contained in Paragraph IV, denies Third-Party Plaintiffs are entitled to contribution and/or indemnity; denies Markel is liable to Third-Party Plaintiffs for any alleged overpayments; denies Third-Party Plaintiffs are entitled to any recovery from Markel; and states it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein.

5. With respect to the allegations contained in Paragraph V, denies Third-Party Plaintiffs are entitled to declaratory judgment relief; and states it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein.

6. With respect to the allegations contained in Paragraph VI, denies the allegations against Markel; and states it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein.

7. Denies all allegations not specifically admitted.

#### **AFFIRMATIVE DEFENSES**

8. Third-Party Plaintiffs' state law claims are preempted by ERISA.

#### **RELIEF REQUESTED**

9. Markel requests the following relief:

- (a) That Third-Party Plaintiffs take nothing by reason of their suit;
- (b) That Markel be dismissed with its costs and attorneys' fees under 29 U.S.C. §1132(g); and
- (c) That Markel have such other and further relief, both general and special, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

By: \_\_\_\_\_

Andrew G. Jubinsky  
State Bar No. 11043000  
Attorney-in-Charge

OF COUNSEL:  
Timothy A. Daniels  
State Bar No. 05375190  
Bill E. Davidoff  
State Bar No. 00790565

FIGARI DAVENPORT & GRAVES, L.L.P.  
4800 Bank of America Plaza  
901 Main Street  
Dallas, Texas 75202  
(214) 939-2000  
(214) 939-2090 (FAX)

ATTORNEYS FOR THIRD-PARTY  
DEFENDANT MARKEL INSURANCE  
COMPANY

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing document has been forwarded via certified mail, return receipt requested, to the parties on the attached Service List on the 10th day of August, 2000.

\_\_\_\_\_  
Andrew G. Jubinsky

IA15098.0001

## **SERVICE LIST**

Demitri Zgourides  
Kathy Strahan  
Andrews & Kurth, L.L.P.  
600 Travis Street  
STE 4200  
Houston, Texas 77002

Charles A. Clark  
Clark Lea Rutter & Logson  
604 Woldert  
Tyler, Texas 75702

Babette Ceccotti  
Cohen Weiss & Simon  
330 W. 42nd Street  
New York, New York 10036-6926

Peter Roan  
Conaviesky & Rank  
633 West Fifth Street  
STE 3500  
Los Angeles, California 90071

John Scully  
Cooper & Scully, P.C.  
900 Jackson Street  
STE 100/Founders Square  
Dallas, Texas 75202

Will D. Davis  
200 Perry Brooks Building  
Austin, Texas 78701

Hector Deleon  
701 Brazos  
STE 480  
Austin, Texas 78701

John Orr  
Michael Klein  
Fulbright & Jaworski, L.L.P.  
600 Congress Avenue  
STE 2408  
Austin, Texas 78701

Judith Schenning  
Fulbright & Jaworski, L.L.P.  
2200 Ross Avenue  
STE 2800  
Dallas, Texas 75201-2784

Douglas D. Haloftis  
Gardere & Wynne  
1601 Elm Street  
3000 Thanksgiving Tower  
Dallas, Texas 75201

Joseph Russo  
Scott Daniel  
Greer Herz & Adams, L.L.P.  
18th Floor  
One Moody Plaza  
Galveston, Texas 77550-7998

Robert Harris  
The Law Offices of Robert L. Harris  
1919 S. Shiloh  
STE 200/First State Bank of Texas  
Garland, Texas 75042

Jim Johnson  
The Johnson Law Firm  
8333 Douglas Avenue  
STE 900  
Dallas, Texas 75225

Phillip Stano  
Jorden Burt Boros Cicchitti  
1025 Thomas Jefferson Street, N.W.  
STE 400 E  
Washington, D.C. 20007

Chuck Kreutz  
Buddy Steele  
Locke Liddell & Sapp, L.L.P.  
100 Congress Avenue  
STE 300  
Austin, Texas 78701-4042

Michael Collins  
Locke Liddell & Sapp, L.L.P.  
2200 Ross Avenue  
STE 2200  
Dallas, Texas 75201

George C. Haratsis  
McDonald Sanders  
777 Main Street, P.C.  
STE 1300  
Fort Worth, Texas 76102-5305

William S. Hommel, Jr.  
McGee Hommel & Starr  
3304 S. Broadway  
STE 202/Oak Plaza Office Park  
Tyler, Texas 75701

David Martin  
Malesovas Martin & Tekell, L.L.P.  
425 Austin Avenue  
10th Floor  
P.O.Box 1709  
Waco TX 76703-1709

John Seiger  
New Era Life Ins. Co.  
P.O.Box 4884  
Houston, Texas 77210-4884

James L. Jackson, Jr.  
Law Offices of Pat O'Neill  
110 West 7th Street  
STE 1100  
Fort Worth, Texas 76102

Michael E. Jones  
Potter Minton Roberts Davis  
& Jones, P.C.  
P.O.Box 359  
Tyler, Texas 75710

Mike Crawford  
Ramey & Flock  
P.O.Box 629  
Tyler, Texas 75710

D. Brent Lemon  
Shaw & Lemon  
2723 Fairmount  
Dallas, Texas 75201

Wayne Mason  
Strasburger & Price, L.L.P.  
901 Main Street  
STE 4300  
Dallas, Texas 75202

Sandy McCorquodale  
Vial Hamilton Koch & Knox, L.L.P.  
1717 Main Street  
STE 4400  
Dallas, Texas 75201-7388

Russell Yager  
Vinson & Elkins, L.L.P.  
2001 Ross Avenue  
3700 Trammell Crow Center  
Dallas, Texas 75201-2975

E. Stratton Horres, Jr.  
Wilson Elser Moskowitz Edelman &  
Dicker, L.L.P.  
1201 Elm Street  
5000 Renaissance Tower  
Dallas, Texas 75270